



Ministry
of Defence

VIASAT UK LIMITED
Royal Pavillion
Tower 2 Fourth Floor
Wellesley Road
Aldershot

de&s

Merlin SCO

Merlin Delivery Team
Defence Equipment & Support
100, Centenary House
Box 146
Lysander Road
Yeovil BA22 2YB

22 Feb 2019
Reference: HELSME/0016

Offer Of Contract HELSME/0016 for the Supply of Link 16 Multi-Functional Information Distribution System Joint Tactical Radio System (MIDS-JTRS) Ancillary Equipment

1. You are hereby informed of the Authority's requirement and you are invited to accept the Offer of Contract, detailed in the attached Schedule of Requirements. The Schedule describes the requirements and sets out the Contract terms and conditions which will take effect on acceptance by you of the Authority's Offer.
2. If you wish to accept this Offer, please complete and sign both copies of the DEFFORM 10 returning one copy to me at the address shown above by post within 10 working days of the date of this Offer. Your acceptance of the Authority's Offer must be unqualified. If you do not accept the Authority's Offer within the period specified, then the Authority's Offer will lapse.
3. No Contract will come into existence until you have accepted the Authority's Offer in accordance with paragraph 2 above. Accordingly, prior to your unconditional acceptance of this Offer, the Authority shall not be responsible in any way whatsoever for any:
 - a. work undertaken by you; or
 - b. costs incurred by you.
4. When you have accepted the Authority's Offer in accordance with paragraph 2 above, you must proceed with the performance of the Contract.
5. Where no price is stated in the price column of the Schedule of Requirements:

- a. You must submit your quotation (supported where appropriate by a Certified Statement of Costs) as soon as practicable so that prices can be fixed in accordance with the provisions for price fixing contained in the Contract. In order to assist with pricing, your quotation must include an analysis showing the way in which you have built up your price(s). The analysis should show the amounts included under such headings as: Direct Labour (man hours and wage rates); Overheads; Materials; Bought out parts; Sub-contracted work; Special jigs, tools etc; and Profit.
- b. You must identify separately amounts in respect of work placed with subsidiary companies or firms. You must also identify separately any other relevant information or

[REDACTED]

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[REDACTED] Merlin DT Senior Commercial Manager
[REDACTED]

Yours sincerely,

6. The Authority may publish notification of the Contract and shall publish Contract documents under the FOI Act except where publishing such information would hinder law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain
7. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.
8. Under no circumstances should you confirm to any third party the fact of your acceptance of this Offer of Contract prior to informing the Authority of your acceptance, and / or ahead of the Authority's announcement of the Contract award.
9. Nothing contained in this Offer and in the attached Schedule shall be construed as notifying or implying acceptance by the Authority of any estimated or suggested price or of any condition of Contract which may have been referred to orally or in writing in any previous discussion or correspondence.

Acceptance of Offer of Contract

To:

We acknowledge receipt of your Authority's Letter of Offer, reference HELSME/0016 dated Feb 19, with associated documents and confirm that we accept the offer contained therein. We understand that by accepting the Authority's offer, we are entering into a legally binding Contract. We agree that any other terms and conditions or any general reservations, which may be printed on any of our correspondence in connection with this work, shall not be applicable to the Contract. We confirm that we are proceeding with the work.

We agree that the Contract shall be subject to English Law.

A) Offer Contract HELSME/0016 constitutes an offer by the Authority for the supplier to supply the Deliverables. This is open for acceptance by the Supplier until 8 March 19. By signing below the Contractor agrees to be bound by the attached Contract terms and conditions. Signed by:  Name (Block Capitals):  Position: Merlin SCO For and on behalf of the Authority Authorised Signatory: <i>MOB COMMERCIAL</i> Date: 22/2/2019		B) Acceptance of Offer of Contract I acknowledge receipt of the Authority's Contract letter reference HELSME/0016 dated Feb 19 I confirm that I accept the Offer it contains and agree to be bound by its terms. Signed by:  Name (Block Capitals):  Position: Contracts Director For and on behalf of Viasat UK Limited Authorised Signatory: Viasat UK Limited Date: 25/02/2019																			
C) Scots law to apply? Yes ☐ No ☒																					
D) Tier 1 Sub-Contractor data: <table border="1"> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> <tr> <td>Name</td> <td>value of work (£ ex VAT)</td> <td>Location Of Work</td> <td>SME: Yes / No</td> </tr> </table>		Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No	Name	value of work (£ ex VAT)	Location Of Work	SME: Yes / No
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¹ The date of unqualified acceptance by signature is the effective date of the Contract

² The MOD is required to report to the Government any spend with Small and Medium-sized Enterprises (SMEs) including Sub-contractors (Tier 1). SMEs are defined by the EU on <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/>

**HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY THE SECRETARY
OF STATE FOR DEFENCE**

This Agreement is made this 22 day of February, in the year 2019.....

BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the AUTHORITY) as represented by the
Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

AND

VISAT Inc, 6155 El Camino Real, Carlsbad, CA 92009, USA (afterwards referred to as the COMPANY);
each being referred to as a "Party" and collectively as the "Parties".

BACKGROUND

I. The AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial
Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each
time those products are purchased; and

II. The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of
Commercial Software to the AUTHORITY.

For the purpose of this Agreement "Commercial Software" means software available commercially including that
software modified on sale to suit the requirements of a customer.

THE HEAD AGREEMENT

1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the
"Annex"), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from
the COMPANY and from any of its wholly owned subsidiaries for which the COMPANY is entitled to make this
Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence
or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.

2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall
be established by a schedule (the "Schedule") which incorporates those terms by making reference to this Head
Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.

.....

Signed for and on behalf of the COMPANY [insert name of company]
[redacted]
[redacted] [redacted]
[redacted] [redacted]

[Print name]-

.....[Insert capacity of signatory] in the capacity of
 Viasat Inc., Sr. Contracts Mgr

ATTACHMENT 1 TO ANNEX A TO HEAD AGREEMENT – STANDARD FORM OF LICENSING SCHEDULE

SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE AUTHORITY AND VIASAT INC. DATED:

22 February 2019 [Insert date of Head Agreement]

CONTRACT REFERENCE NUMBER: HELSME/0016

By their respective signatures of this Schedule the Secretary of State For Defence (the "AUTHORITY") undertakes to purchase and Viasat, Inc. (the "LICENSOR") undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Conditions set down in the Annex A to the Head Agreement and any Special Conditions set forth below which may vary or add to those Standard Conditions.

PART I - LICENSED SOFTWARE

- Link 16 Environment Gateway Stimulator for JTRS Lite (LEGS-J-LITE) – VA-0222801-9952
- Annual Subscription for LEGS-J-LITE – VA-022901-9998
- Site License for LEGS-J-LITE – VA-022801-9951

Including all derivatives of each
All of which are provided by Viasat, Inc. as owner and licensor and also as a licensee of inbound licensed software contained within the Licensed Software.

PART II - DESIGNATED EQUIPMENT

The AUTHORITY and its contractors identified in Part III shall have the right to install and use each Licensed Software on one (1) stand-alone computer either owned by or under the control of the AUTHORITY or the identified contractor.

PART III - DESIGNATED SITE

Thales UK Ltd
UIN: KH888
Manor Royal
Crawley
West Sussex
RH10 9HA
UK

PoC:

Email:

Leonardo Helicopters
UIN: N2951A
Lysander Road
Yeovil
BA20 22YB
UK

PoC:

Email:

If the Licensed Software does not substantially conform to the published specifications in effect at the time of delivery for such Licensed Software when used on the recommended operating system and hardware configuration, a claim must be submitted in writing by the AUTHORITY or the contractor identified in Part III no more than ninety (90) days after the Licensed Software is delivered to the AUTHORITY or the identified contractor.

PART IV – ACCEPTANCE PERIOD & TEST

DEFORM 701 (Attachment)
Edn 04/06

PART V - LICENCE FEES

LICENSED SOFTWARE	
Description	Licence Fee per Unit (GBP)
LEGGS-J-LITE Software Licence including a 1 year software update subscription	██████████
Annual Subscription for LEGGS-J-LITE for years 2, 3 and 4	██████████
Site Licence for LEGGS-J-LITE	██████████

PART VI - INVOICE ARRANGEMENTS

Upon delivery of the Licensed Software to the site designated in Part III, LICENSOR shall invoice the AUTHORITY for the agreed LICENSE Fee through the Authority CP&F system.

PART VII - WARRANTY PERIOD

The AUTHORITY has ninety (90) days from the day of receipt of the Licensed Software to submit a claim in accordance with Part IV. The entire liability of LICENSOR and the AUTHORITY's exclusive remedy will be limited to either, at LICENSOR's option, replacement of the Licensed Software or refund of the Licence fees that the AUTHORITY paid for the Licensed Software, if any. In no event does LICENSOR warrant that the Licensed Software is error free.

PART VIII - SPECIAL CONDITIONS

A. Licence Grant – Licensor grants the AUTHORITY a limited, non-exclusive, non-transferable, Licence to use the Licensed Software in support of **Link-16 communications on the Crownest Program** ("Purpose"). The Licence granted hereunder is not a sale of the Licensed Software or of any rights thereto and conveys no right, interest or title to the AUTHORITY other than a right to use the Licensed Software in the manner and for the "Purpose" stated herein. The Licence grant does not give the AUTHORITY any right to edit, change, format, enhance or otherwise modify the Licensed Software or to merge the Licensed Software or any portion thereof with other software programs to form an updated or derivative work without the express written permission of the LICENSOR which shall not be unreasonably withheld. Except as identified in Article III, this Licence grant does not permit the AUTHORITY to assign, sublicense or transfer the Licence without the express written permission of the LICENSOR which shall not be unreasonably withheld.

B. Title (Ownership) - The Licensed Software, including all title, copyright and other rights thereto, is owned by and shall remain the property of LICENSOR and its licensors and be subject to the Head Agreement, Annex A and this Attachment 1 to Annex A. The AUTHORITY agrees that it will use the Licensed Software only as authorized herein, that it will not copy, modify, create derivative works of, decompile, disassemble, translate or reverse engineer the Licensed Software except as expressly authorized herein. The AUTHORITY further agrees that it will retain all proprietary and copyright notices of LICENSOR and its licensors in the Licensed Software.

DEFFORM 701 (Attachment)
Edn 04/06

C. Third Party Proprietary Rights - The installation package for the Licensed Software includes the End User License Agreement(s) (EULA) for any and all Third Party/Free-Open Source Software which may be included. The AUTHORITY agrees that it, its contractors and their subcontractors will abide by the terms of such third party licenses.

D. Copyright; Proprietary Rights - The Licensed Software is protected by copyright and other intellectual property laws and by international treaties. The AUTHORITY acknowledges that the Licensed Software contains valuable proprietary information and trade secrets of LICENSOR and its licensors and that unauthorized dissemination or use of the Licensed Software will cause irreparable harm. To the extent allowed by law, the LICENSOR shall be entitled to injunctive relief in addition to all other available remedies.

E. Copies - The copies that the AUTHORITY is authorized to make pursuant to Annex A Section 2.5 are for back-up use and disaster recovery only.

F. Characterization of the Licensed Software - For the purpose of defining "COMMERCIAL SOFTWARE", this Agreement assumes the Licensed Software identified in Part V is "commercial computer software" and "commercial computer software documentation" as specified under the U.S. Federal Acquisition Regulation 12.212 or the Defense Acquisition Regulations Supplement 227.7702 and nothing in the Head Agreement, Annex A or this Attachment 1 to Annex A changes the characterization of the Licensed Software to become non-commercial in nature.

G. Export Compliance - The AUTHORITY hereby gives written assurance to Licensor that it will not ship, export, transfer, or release ("export"), directly or indirectly: (1) the Licensed Software; (2) any written information or information contained on any physical media provided by LICENSOR to the AUTHORITY related to the Licensed Software; or (3) the direct product of any of the above ("Deliverables"), without first obtaining the required U.S. government licenses and approvals. The AUTHORITY furthermore agrees not to export Deliverables to any country or entity prohibited or restricted by the U.S. export and sanction laws and regulations, including, but not limited to, the International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State and the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce. The AUTHORITY further assures LICENSOR that no Deliverables received from LICENSOR will be directly employed or exported to any end-user engaged in prohibited activities, or for any end-use, related to the design, development, production, or use of weapons of mass destruction including nuclear, chemical, or biological weapons, and/or the missile technology to deliver them.

H. Order of Precedence - The terms of this Attachment 1 to the Annex A shall take precedence over the terms of any software license agreement found on the installation CD or in the software documentation.

PART IX - LIMITS OF LICENSOR'S LIABILITY

DEFFORM 701 (Attachment)
Edn 04/06
Subject to the limitations and exclusions in Annex A's Article 6 and Article 8, Licensor's aggregate liability under or in connection with this agreement will be limited to three times (3X) the aggregate Licence fees paid under which the liability arose.

FOR LICENSOR		FOR AUTHORITY	
Signed		Signed	
Name		Name	
Appointment Viasat Inc., Sr Contracts Mgr		Appointment MOD Commercial	
Date 25Feb2019		Date 22/2/2019	

Ministry
of Defence



MERLIN Delivery Team

Contract No: HELSME/0016

For:

Provision of Link 16 Multi-Functional Information Distribution System Joint Tactical Radio System (MIDS-JTRS) Ancillary Equipment

Between the Secretary of State for Defence
of the United Kingdom of Great Britain and
Northern Ireland

Team Name and address:
DE&S, Merlin DT, Building 100
Lyssander Road
Box 145
Yeovil

Contractor Name and Address
VIASAT UK LIMITED
Royal Pavilion
Tower 2 Fourth Floor
Wellesley Road
Aldershot

Email Address: [Redacted]
Telephone Number: [Redacted]
Facsimile Number: [Redacted]

Email Address: [Redacted]
Telephone Number: [Redacted]
Facsimile Number: [Redacted]

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General Conditions

1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor represents, that:

- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
 - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitral, arbitrator, administrator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
 - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:

- (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
- (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
- (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
- (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
- (5) The heading to any Contract provision shall not affect the interpretation of that provision.
- (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
- (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the 31st August 2019 unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgment, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- e. Each Party agrees with each other Party that the provisions of this condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

5. Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
 - (1) Conditions 1 - 47 of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements)
 - (3) the remaining Schedules; and
 - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition 40 (Dispute Resolution).

6. Amendments to Contract

- a. Except as provided in condition 31(Diversion Orders) all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.

- b. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause 6.a above has been issued.

7. Variations to Specification

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 6 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

- b. Any variations that cause a change to:

- (1) fit, form, function or characteristics of the Contractor Deliverables;
- (2) the cost;
- (3) Delivery Dates;
- (4) the period required for the production or completion; or
- (5) other work caused by the alteration,

shall be the subject to condition 6 (Amendments to Contract). Each amendment under condition 6 shall be classed as a formal change.

8. Authority Representatives

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition 8.

- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition 6 (Amendments to Contract).

9. Severability

- a. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then: (1) such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

(2) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

10. Waiver

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

11. Assignment of Contract

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

12. Third Party Rights

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

13. Transparency

- a. Subject to clause 13.b but notwithstanding condition 14 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- b. Before publishing the Transparency Information to the general public in accordance with clause 13.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 5 – Contractor's Commercially Sensitive Information.
- c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause 13.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- d. For the avoidance of doubt, nothing in this condition 13 shall affect the Contractor's rights at law.

14. Disclosure of Information

- a. Subject to clauses 14.d, 14.e, 14.h and condition 13 each Party:
 - (1) shall treat in confidence all Information. It receives from the other marked with a legend indicating that the information requires restrictive access; for clarity legends includes, but not limited to, Official Sensitive, Proprietary, Business Sensitive;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and

- (4) shall not copy any of that information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses 14.a and 14.b before receiving information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses 14.a and 14.b shall not apply to any information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the information in accordance with other Conditions of the Contract; or can show:
- (a) that the information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the information was already known to it (without restrictions on disclosure or use) prior to receiving the information under or in connection with the Contract;
 - (c) that the information was received without restriction on further disclosure from a third party which lawfully acquired the information without any restriction on disclosure; or
 - (d) from its records that the same information was derived independently of that received under or in connection with the Contract;
- e. Neither Party shall be in breach of this condition where it can show that any disclosure of information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
- f. The Authority may disclose the information:
- (1) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
 - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
 - (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

- g. Before sharing any information in accordance with clause 14.f, the Authority may redact the information. Any decision to redact information made by the Authority shall be final.

- h. The Authority shall not be in breach of the Contract where disclosure of information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

- i. Nothing in this condition shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence

15. Publicity and Communications with the Media

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

16. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 16.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any preexisting non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

- b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section
Strategic Supplier Management Team
Poplar 1 # 2119
MOD Abbey Wood,
Bristol, BS34 8JH

The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

- c. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 16.a. The Authority shall act reasonably in exercising its right of termination under this condition.

- d. If the Authority exercises its right to terminate in accordance with clause 16.c the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 16.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

e. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this condition.

17. Environmental Requirements

The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

18. Contractor's Records

a. The Contractor and its sub-contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise), and make them available to the Authority when requested on reasonable notice.

b. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
- (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

c. With regard to the records made available to the Authority under clause 18a of this Condition, and subject to the provisions of conditions of contract clause 14, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

- (1) the end of the Contract term;

- (2) the termination of the Contract; or

- (3) the final payment,

whichever occurs latest.

19. Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;

- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

- (3) if sent by facsimile or electronic means:

- (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

- (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

20. Not Used

21. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

- b. The Contractor shall:

- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and

- (2) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

- c. The provisions of clause 21.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

- d. The Contractor shall:

- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;

- (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

- (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

22. Not Used

23. Packaging and Labelling

- a. Packaging responsibilities are as follows:

- (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.

- b. The Contractor shall supply Commercial Packaging substantially meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements shall apply:

- (1) The Contractor shall provide Packaging which:

- (a) will ensure that each Contractor Deliverable may be transported and delivered to the consignee named in the Contract in an undamaged and serviceable condition; and

- (b) is labelled to enable the contents to be identified without need to breach the package; and

24. Supply of Hazardous Materials or Substances in Contractor Deliverables

(c) is compliant with statutory requirements and this Condition.

a. The Contractor shall provide to the Authority:

- (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with REACH and Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
- (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor. If the Contractor is not able to validate compliance with this clause 24, then Contractor shall be under no further obligation or liability under this Contract.

b. If the Contractor Deliverable contains hazardous materials or substances or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:

- (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below, and
- (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

c. If the Contractor is required, under, or in connection with the contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.

d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).

e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.

f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

(1) activity;

(2) the substance and form (including any isotope);

g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clause 24.a, any information arising from the provisions of Clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a

copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:

Hazardous Stores Information System (HSIS)
Defence Safety Authority (DSA)

Movement Transport Safety Regulator (MTSR)

Hazel Building Level 1, #H019

MOD Abbey Wood (North)

Bristol, BS34 8QW

Emails to be sent to:

- i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43 (Material Breach).

25. Timber and Wood-Derived Products

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:

- (1) shall comply with the Contract Specification; and

- (2) must originate either:

- (a) from a Legal and Sustainable source; or

- (b) from a FLEGT-licensed or equivalent source.

- b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:

- (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

- (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

- (3) safeguarding the basic labour rights and health and safety of forest workers.

- c. If requested by the Authority, the Contractor shall provide to the Authority under the Contract that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.

- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.

- e. If the Contractor has already provided the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.

- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with condition 18 (Contractor's Records).

- g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

(1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and

(2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.

h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

(1) verify the forest source of the timber or wood; and

(2) assess whether the source meets the relevant criteria of clause 25.b.

i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with condition 6 (Amendments to Contract).

j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7s (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including Nil Returns where appropriate, to the Authority's Representative (Commercial).

k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with condition 6 (Amendments to Contract).

l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:

(1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at [redacted] and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or

(2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at [redacted])

26. Certificate of Conformity

a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CoC) in accordance with Schedule 2 (Schedule of Requirements) and any applicable Quality Plan. One copy of the CoC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.

b. The Contractor shall consider the CoC to be a record in accordance with condition 18 (Contractor's Records).

c. The information provided on the CoC shall include:

- (1) Contractor's name and address;
- (2) Contractor unique CoC number;
- (3) Contract number and where applicable Contract amendment number;
- (4) details of any approved concessions;
- (5) acquirer name and organisation;
- (6) Delivery address;
- (7) Contract Item Number from Schedule 2 (Schedule of Requirements);

- (8) description of Contractor Deliverable, including part number, specification and configuration status;
- (9) identification marks, batch and serial numbers in accordance with the Specification;
- (10) quantities;
- (11) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.

27. Access to Contractor's Premises

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant office accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 27 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

28. Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any information pertinent to Delivery requested;
 - (2) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (3) be responsible for all costs of Delivery; and
 - (4) Deliver the Contractor Deliverables to the Consignee at the address stated in Schedule 2 (Schedule of Requirements) by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative (Transport) as detailed in box 10 of DEFFORM 111 at Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
 - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:

- 29. Acceptance**
- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
 - (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
 - (2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.
- (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or
- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

- 30. Rejection**
- a. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.
 - b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place within 15 business days.
- 31. Diversion Orders**
- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
 - b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
 - c. The Authority reserves the right to cancel the Diversion Order.
 - d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
 - e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
 - f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

32. Not Used

33. Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as seen as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

(1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

- (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
- (b) the end use as: For the Purposes of HM Government; and

(2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

c. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- (1) the Contractor shall, or procure that the Contractor's subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
- (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extrajurisdictionally, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export

[REDACTED]

The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

(2) any other related transfer or export control, that imposes or will impose end use, and user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in condition 34 (Third Party Intellectual Property – Rights and Restrictions).

During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.1 or 33.m of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 (Import and Export Controls) to the Authority.

Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are

the Contract shall be modified in accordance with its terms to implement the proposal.

any may refer the matter to dispute resolution in accordance with the provisions in the Contract.

r. In the event that the restrictions notified to the Authority pursuant to Clause 33.1 were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 33.1, termination under Clause 33.1 will be in accordance with condition 43 (Material Breach) and the provisions of clause 33.v will not apply.

s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to material to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide material necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that material is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 33.k, the Authority shall provide a completed DEFFORM 528 (Import and Export Controls) to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such material to the Contractor.

t. In the event that the Authority becomes aware that the DEFFORM 528 (Import and Export Controls) disclosure was incomplete or inaccurate or in the event additional such material is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528 (Import and Export Controls). In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 (Import and Export Controls) submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure. Where:

- (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 (Import and Export Controls) provided pursuant to Clauses 33.s or 33.t or both; or
- (2) any of the information provided by the Authority in any DEFFORM 528 (Import and Export Controls) proves to be incorrect or inaccurate;

The Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of condition 6 (Amendments to Contract) or condition 7 (Variations to Specification) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of condition 42 (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

w. The Contractor shall use commercially reasonable efforts to obtain all the necessary approvals and licences prior to the export of the Articles listed in Schedule 2 (Schedule of Requirements). In the event that Contractor is unable to obtain said approvals and licences, then Contractor shall be under no further obligation or liability under this Contract.

34. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

- (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

- (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the

Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;

(3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor or its Subcontractors as a Commercial Off The Shelf (COTS) item or service, Articles that Contractor or Subcontractors sell on their commercial price list(s) or Articles developed at the Contractor or Subcontractor expense.

b. If the information required under clause 34.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This condition shall not apply if:

(1) the Authority has made or makes an admission of any sort relevant to such question;

(2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

(3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

(4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.

g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:

(1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

(2) in any event, unless the Contractor and the Authority can agree an alternative course of

action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

i. Subject to condition 47, the Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. Not Used.

k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other intellectual Property Right (IPR) owned by a third party;

(2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

(3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;

(4) the party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

q. The Contractor shall retain all rights to its background intellectual property that is included in any Articles delivered to the Authority. Notwithstanding any other clause in this contract to the contrary, Contractor shall also retain full intellectual property ownership to any foreground intellectual property that may be generated under this Contract.

35. Contract Price

a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price.

b. Subject to condition 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

36. Payment and Recovery of Sums Due

a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 36b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

b. Where the Contractor submits an invoice to the Authority in accordance with clause 36a, the Authority will consider and verify that invoice in a timely fashion.

c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

d. Where the Authority fails to comply with clause 36a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36c after a reasonable time has passed.

e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract

37. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- b. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- c. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- d. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- e. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with condition 40 (Dispute Resolution).
- f. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.
- g. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition 38 shall be subject to:

(1)

reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.d;

- (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (3) the Authority receiving notification under both clauses 38.b and 38.c(2).

- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:

- (1) is made aware of the Authority's continuing rights under clauses 38.a(1) and 38.a(2); and
- (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).

- d. The provisions of condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

39. Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.

- b. Where the Contractor enters into a Subcontract he shall cause a term to be included in such Subcontract:

- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

- (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;

- (3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and

- (4) requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

40. Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

- b. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

41. Termination for Insolvency or Corrupt Gifts

Insolvency:

- a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

- (6) where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

- (a) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or

- (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

- (8) the court making an award of sequestration in relation to the Contractor's estates. Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

- (10) the court making an administration order in relation to the company; or

- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

- (12) the company passing a resolution that the company shall be wound-up; or

- (13) the court making an order that the company shall be wound-up; or

- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out clauses 41.a(9) to 41.a(14) inclusive above.

- b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor

Corrupt Gifts:

- c. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

- (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

- (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

- d. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

- (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

- (3) to recover from the Contractor any other loss sustained in consequence of any breach of this condition, where the Contractor has not been terminated.

- e. In exercising its rights or remedies under this condition, the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

- (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

- (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

- (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

- f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

42. Termination for Convenience

- a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) business days written notice. Upon expiry of the notice period the Contractor, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfill their respective obligations on all other parts of the Contract not being terminated.

- b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (1) not start work on any element of the Contractor Deliverables not yet started;

- (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;

- (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 42.b(2) and 42.b(3) of this condition.

c. Where this condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 42.b):

(1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

- (a) in the possession of the Contractor at the date of termination; and
- (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

(2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

- (a) all such unused and undamaged materiel; and
- (b) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 42.e below and to the Contractor's compliance with any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 42.a to 42.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause 42.c(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) business days; and
- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this condition 42.

g. Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

43. Material Breach

a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.

b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material

breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- (2) obtaining the Contractor Deliverable in substitution from another supplier.

44. Consequences of Termination

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

45. Warranty

a.

Contractor warrants the Articles against defects in material and workmanship for a period of twelve (12) months from the date of shipment. Contractor warrants against defects in material and workmanship directly associated with the refurbishing, repairing, or upgrading Contractor product that is accomplished under a valid out-of-warranty repair contract for a period of ninety (90) days from date of shipment. Contractor will, at its sole option, repair or replace those Articles but no later than ten (10) days after expiration of the warranty period.

b.

Contractor's obligations under the terms of the warranty are limited to repair or replacement, at Contractor's option. The Authority shall provide for any removal of the defective unit or component from any product with which it has been integrated subsequent to leaving Contractor's plant. Replacement parts may be reconditioned and will not extend the warranty period. Warranty service is provided on a return to Contractor's facility only with the Authority being responsible for prepaying all freight, insurance and other charges. Articles covered by this warranty will be returned to the Authority with freight other charges prepaid by Contractor. The Authority is responsible for all risk of loss and for all import/export documents, licenses, customs clearances and other requirements and charges associated with returns to and from the United States; and for installation. This warranty is not assignable nor is any third party intended to be benefited hereby.

c.

This warranty shall not apply to any Articles or parts thereof, that (a) has had the serial number, model number, or other identification markings altered, removed or rendered illegible, (b) has been damaged by or subject to improper installation or operation, misuse, neglect, use in any way with equipment not previously approved in writing by Contractor, or from any cause beyond Contractor's control; (c) has been repaired or altered by other than Contractor personnel and/or has been subject to the opening of any sealed cabinet boxes without Contractor's prior written consent, and/or instructions provided with the Articles. Specifically excluded from this warranty are fuses, lamps, connectors, and re-calibration or adjustment of the Articles. All Articles returned under a warranty claim must be returned in accordance with Contractor's standard return material authorization procedures, including a written claim reciting the nature and details of the claim, the date the cause of the claim was first observed and the unit serial number.

d.

Third party equipment and software are warranted by the original equipment manufacturer(s) and such warranties shall be assigned to the Authority as extended to Contractor.

e.

EXCEPT FOR THE FOREGOING EXPRESS WARRANTY AS TO ARTICLES, CONTRACTOR MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OF ANY KIND WITH RESPECT TO THE ARTICLES AND SOFTWARE PRODUCTS AND SERVICES, WHETHER WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR BASED ON ANY SAMPLE OR MODEL. SOFTWARE PRODUCTS ARE PROVIDED "AS IS".

46. Software Licence Agreements

The following Annexes shall apply as conditions to this contract:

a.

Annex A – DEFFORM 701 – Ref: 20180918 - DEFFORM 701 Head Agreement.

b. Annex A Attachment 1 - Ref: 20181013 - DEFFORM 701 - Attachment 1 to Annex A to Head Agreement - Viasat Inc LEG..-(002)

47. Limitation of Liability

a. The total liability of the Contractor in contract, tort (including negligence), breach of statutory duty, or otherwise, for any and all events in relation to or arising out of the Contract, shall not exceed the charges paid by Authority under the Contract.

b. Contractor shall not be liable to the Authority for:

c. any indirect or consequential loss or damage;

(1) any loss of profits, loss of revenue, loss of contract, loss of actual or anticipated savings, loss of goodwill or business opportunities, loss of sales or turnover, loss of or damage to reputation or loss of customers; or

(2) any punitive or exemplary damages.

d. Nothing in this Contract shall exclude or limit Contractor's liability for:

(1) death or personal injury caused by its negligence or that of its employees, agents or Sub-contractors; or

(2) its own fraud or fraudulent misrepresentation.

(3) its own undertaking of prohibited acts or the committing of any offence under the Bribery Act 2010.

Schedule 1 - Definitions of Contract

Articles

means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements)

Authority

means the Secretary of State for Defence acting on behalf of the Crown;

Authority's Representative(s)

shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of condition 8;

Business Day

means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

Central Government Body

a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a. Government Department;
- b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c. Non-Ministerial Department; or
- d. Executive Agency;

Collect

means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;

Commercial Packaging

means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)

Conditions

means the terms and conditions set out in this document;

Consignee

means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;

Consignor

means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

Contract

means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition 6 (Amendments to Contract);

Contract Price

means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.

Contractor

means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

Contractor Commercially Sensitive Information

means the information listed in the completed Schedule 5 (Contractor's Commercially Sensitive Information Form), which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables

means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;

Control

means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person;

a.

by means of the holding of shares, or the possession of voting powers in, or in relation

to, the Contractor, or

b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

CPET

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy

Crown Use

in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- d. International Maritime Dangerous Goods (IMDG) Code;
- e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
- f. International Air Transport Association (IATA) Dangerous Goods Regulations.

DBS Finance

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

DEFORM

means the MOD DEFORM series which can be found at [https://\[REDACTED\]](https://[REDACTED])

DEF STAN

means Defence Standards which can be accessed at [https://\[REDACTED\]](https://[REDACTED])

Deliver

means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with condition 28 and Delivered and Delivery shall be construed accordingly;

Delivery Date

means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;

Denomination of Quantity (D of Q)

means the quantity or measure by which an item of material is managed;

Design Right(s)

has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

Diversion Order

means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);

Effective Date of Contract

means the date specified on the Authority's acceptance letter;

Evidence

means either:

1. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or
2. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;

Firm Price

means a price (excluding VAT) which is not subject to variation;

FLEGT

means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;

Government Furnished Assets (GFA)

is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

Hazardous Contractor Deliverable

means a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Independent Verification

means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011:2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent";

Information

means any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

Issued Property

means any item of Government Furnished Assets (GFA), including any material issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

Legal and Sustainable

means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the Contract documents are issued by the Authority shall apply;

Legislation

means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

NATO

means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;

Notices

shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Overseas

shall mean non UK or foreign;

Packaging

Verb. The operations involved in the preparation of material for, transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;

Parties

means the Contractor and the Authority, and Party shall be construed accordingly;

**Primary Packaging
Quantity(PPQ)**

means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1).;

Recycled Timber

means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers:
pre-consumer reclaimed wood and wood fibre and industrial by-products;
post-consumer reclaimed wood and wood fibre, and driftwood;
reclaimed timber abandoned or confiscated at least ten years previously;
it excludes sawmill co-products;

Safety Data Sheet

has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended).;

Schedule of Requirements

means Schedule 2 (Schedule of Requirements), which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;

Short-Rotation Coppice

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of

doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

Specification

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);

STANAG 4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/faqs.html>;

Subcontractor

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Transparency Information

means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

Virgin Timber

means Timber and Wood-Derived Products that do not include Recycled Timber.

doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

Specification

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule 2 (Schedule of Requirements);

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/faqg.html>;

Subcontractor

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Transparency Information

means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract;

Virgin Timber

means Timber and Wood-Derived Products that do not include Recycled Timber.

Schedule 2 - Schedule of Requirements for Contract No:HELSME/0016

For Provision of Link 16 Multi-Functional Information Distribution System Joint Tactical Radio System (MIDS-JTRS) Ancillary Equipment

Contractor Deliverables

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code *	Packaging Requirements Inc. PPQ and DotQ	Delivery Date	Total Qty	Price (£) Ex VAT	
								Per Item	Total Inc. packaging (and delivery if specified in Schedule 3 (Contract Data Sheet))
1	MIDS-JTRS Ruggedized Rack	1265286	8U Transportable case unit comprising: Multi-Platform Integrated Controller (MIC), Multi-Platform Audio Component (MAC), cooling tray, Power Supply and I/O Panel, Ethernet & 1553 interfaces, 1PPS I/O, Link 16 Antenna, J-Voice & Web Interface, GPS, IFF 1030/1090 MHz notch filter, and RF termination load.	1 x Thales Crawley 1 x Leonardo Yeovil	Def Stan 81-041 (part 1 and Part 6)	45 days from Contract Award 180 days from Contract Award	2		

Contractor Deliverables

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code *	Packaging Requirements inc. PPQ and DoIQ	Delivery Date	Total Qty	Price (£) Ex VAT	
								Per Item	Total inc. packaging (and delivery if specified in Schedule 3 (Contract Data Sheet))
2	MIDS JTRS W 103 Host Cable with 1553 and Ethernet	1048766	A 70" MIDS JTRS Host Cable for Platform A RT Address 1 with 1553 and Ethernet Channel 1.	1 x Thales Crawley	Def Stan 81-041 (Part 1 and Part 6)	90 days from Contract Award	2		
				1 x Leonardo Yeovil		90 days from Contract Award			
3	Shipping & Packaging for Items 1 & 2	N/A	Shipping from Carlbad, USA to Crawley and Yeovil	1 x Thales Crawley	Def Stan 81-041 (Part 1 and Part 6)	+ 4 days via Expedited Air			
				1 x Leonardo Yeovil		+ 4 days via Expedited Air	Lot		

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code *	Packaging Requirements inc. PPQ and DoIQ	Delivery Date	Total Qty	Price (£) Ex VAT	
								Per Item	Total Inc. packaging (and delivery if specified in Schedule 3 (Contract Data Sheet))
4	LEGS-J-LITE -- MIDS JTRS Link 16 Environment Gateway Simulator Software Gateway Simulator	VA- 022801-9952	A low-cost version of the LEGS software that does not include the scenario generation or situation display capabilities, including 1 year software update subscription.	Thales Crawley	Def Stan 08-041 (Part 1 and Part 6)	10 days after receipt of fully executed TAA update naming Thales as party to the TAA	1		
5	Annual Subscription for LEGS-J-LITE Software	VA- 022801-9998	Annual software update subscription from year 2 up to FOC	Thales Crawley	N/A	10 days after receipt of fully executed TAA update naming Thales as party to the TAA	3		
6	LEGS-J-LITE- MIDS JTRS Site Licence	VA- 022801-9951	Licence for each site	1 x Thales Crawley	N/A	10 days after receipt of fully executed TAA update naming Thales as party to the TAA	2		

Contractor Deliverables

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code *	Packaging Requirements Inc. PPG and DoIQ	Delivery Date	Total Qty	Price (£) Ex VAT	
								Per Item	Total Inc. packaging (and delivery if specified in Schedule 3 (Contract Data Sheet))
7	MDS JTRS Operations & Maintenance Training Course	VSAT-205	MIDS JTRS: Operations and Maintenance. Course 205 is a 5 day training priced at a group rate, conducted at Customer Site. Maximum 12 students per class.	Thales Crawley	N/A	To be arranged after receipt of a fully executed TAA update names Thales as a party to the TAA	1		
8	Travel for item	N/A	Travel from Carlsbad, CA USA for training in the UK.	Thales Crawley	N/A	As Scheduled	1		
Total Price									

General Conditions

Condition 8 – Authority's Representative:

The Authority's Representatives for the Contract are as follows:

Commercial: [REDACTED]

Project Manager: [REDACTED]

Condition 19 – Notices:

Notices served under the Contract shall be sent to the following address:

Authority:
DE&S, Merlin DT, Building 100

Lysander Road

Box 156

YeovilBA20 2YB

Contractor:

VIASAT UK LIMITED

Royal Pavilion

Tower 2 Fourth Floor

Wellesley Road

Aldershot

Notices can be sent by electronic mail? ☒

Condition 21 – Quality Assurance:

Is a Deliverable Quality Plan required for this Contract? ☒ (tick as appropriate)

If required the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within N/A Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Other Quality Assurance Requirements:

AQAP 2310 Edition B Version 1 NATO Quality Assurance Requirements for Aviation, space and Defence Suppliers. CoC shall be provided in accordance with DEFCON 627.

Concessions shall be managed in accordance with Def Stan 05-061 Part 1, Issue 6 – Quality Assurance Procedural Requirements – Concessions.

Condition 24 – Supply of Data for Hazardous Contractor Deliverables, Materials and Substances:

A completed Schedule 6 (Hazardous Articles, Materials or Substance Statement), and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:

a) The Authority's Representative (Commercial)

b) Defence Safety Authority – [REDACTED]

to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: N/A

Condition 25 – Timber and Wood-Derived Products

A completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to the Authority's Representative (Commercial)

to be Delivered by the following date : Within 20 Business Days of Effective Date.

Condition 26 – Certificate of Conformity:

Is a Certificate of Conformity required for this Contract? ☒

Applicable to Line Items: 1 and 2

Clause 28.b – Delivery by the Contractor: (in accordance with Condition 28 above)

The following Line Items are to be Delivered by the Contractor

Line Items 1 and 2

Special Delivery Instructions:

DEFFORM 129J

Other Addresses and Other Information (forms and publications addresses and official use information)

See Annex A to Schedule 3 (DEFFORM 111)

Schedule 4 - Contract Change Process Procedure (i.a.w. clause 6.b)
for Contract No: HELSME/0016

- 1. Authority Changes**
- Subject always to Condition 6 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.
- 2. Notice of Change**
- a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.
- b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with clause 3 below.
- 3. Contractor Change Proposal**
- a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.
- b. The Contractor Change Proposal shall include:
- (1) the effect of the Change on the Contractor's obligations under the Contract;
 - (2) a detailed breakdown of any costs which result from the Change;
 - (3) the programme for implementing the Change;
 - (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
 - (5) such other information as the Authority may reasonably require.
- c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

4. Contractor Change Proposal – Process and Implementation

- a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
- (1) evaluate the Contractor Change Proposal;
 - (2) where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or
 - (2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
- c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.
- d. ~~The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b.(1) above.~~

[REDACTED]

5. Contractor Changes

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b above, and the process at Clause 4 above shall apply.

**Schedule 5- Contractor's Commercially Sensitive Information Form (i.a.w. condition 13)
for Contract No: HELSME/0016**

CONTRACT NO: HELSME/0016	
Description of Contractor's Commercially Sensitive Information:	
Cross Reference(s) to location of sensitive information:	
Explanation of Sensitivity:	
Details of potential harm resulting from disclosure:	
Period of Confidence (if applicable):	
Contact Details for Transparency / Freedom of Information matters:	
Name:	
Position:	
Address:	
Telephone Number:	
Email Address:	

Schedule 6 – Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements for Contract No:HELSME/0016

Hazardous Contractor Deliverables, Materials or Substances Statement by the Contractor

Contract No: HELSME/0016

Contract Title:

Provision of Link 16 Multi-Functional Information Distribution System Joint Tactical Radio System (MIDS-JTRS) Ancillary Equipment

Contractor: VIASAT UK LIMITED

Date of Contract:

* To the best of our knowledge there are no hazardous Contractor Deliverables, materials or substances to be supplied. ☐

* To the best of our knowledge the hazards associated with materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:) attached in accordance with condition 24. ☐

Contractor's Signature:

Name:

Job Title:

Date:

* check box (☒) as appropriate

To be completed by the Authority

Domestic Management Code (DMC):

NATO Stock Number:

Contact Name:

Contact Address:

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)
Defence Safety Authority (DSA)
Movement Transport Safety Regulator (MTSR)
Hazel Building Level 1, #H019
MOD Abbey Wood (North)
Bristol BS34 8QW

Schedule 7 – Timber and Wood - Derived Products Supplied under the Contract:
Data Requirements for Contract No: HELSME/0016

The following information is provided in respect of Clause condition 25 (Timber and Wood – Derived Products):

Schedule of Requirements item and timber product type	Volume of timber Delivered to the Authority with FSC, PEFC or equivalent evidence	Volume of timber Delivered to the Authority with other evidence	Volume (as Delivered to the Authority) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber Delivered to the Authority under the Contract

Appendix - Addressee and Other Information

(Edn 12/17)

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT - Assets in Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

9. Consignment Instructions

The items are to be consigned as follows:

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MOD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

IMPORTS & EXPORTS Surface Freight Centre

IMPORTS & EXPORTS 8946

EXPORTS & IMPORTS 913 8946

B. JSCS

JSCS Helpdesk No. [REDACTED] select option 2, then option 3)

JSCS Fax No. [REDACTED]

www.freightcollection.com

11. The Invoice Paying Authority

Ministry of Defence

DBS Finance

Walker House, Exchange Flags

Liverpool, L2 3YL

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncliffe

Bicester OX25 1LP (Tel: [REDACTED])

Applications via fax or email: [REDACTED]

*** NOTE**

1. Many DEFCONS and DEFORMS can be obtained from the MOD Internet Site:

<https://www.mod.uk/acontent/technical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

1. Commercial Officer

Name: [REDACTED]

Address: DE&S, Merlin DT, Building 100, Lysander Road, Yeovil, BA20 2YB.

Email: [REDACTED]

2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available)

Name: [REDACTED]

Address: Merlin DT, MOD Abbeywood, #1038, BS34 8JH

Email: [REDACTED]

3. Packaging Design Authority

Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)

4. (a) Supply / Support Management Branch or Order Manager:

Branch/Name:

(b) U.I.N.

5. Drawings/Specifications are available from

7. Quality Assurance Representative:

Commercial staff are reminded that any Quality Assurance requirements should be listed under the General Contract Conditions.

AGAPS and DEF STANS are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.dif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

6. Intentionally Blank